Reg. No. GR/RNP/GOA/32

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Panaji, 29th May, 2008 (Jyaistha 8, 1930)

SERIES II No. 9

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Notification

No. 28/18/2007-LAB/19

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 04-12-2007 in reference No. IT/28/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 3rd January, 2008.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case. No. IT/28/2002

Workmen-

1) Shri Narayan Kavlekar
2) Shri Joaquim Gomes
3) Shri Agostinho Travasso
4) Shri Mathew Travasso
5) Shri A. Manuel Fernandes
6) Shri Franky Fernandes (deceased) through his legal heir-mother Juanit Fernandes
7) Shri John Oliveira
8) Shri Joaquem Fernandes
9) Shri Anthony Fernandes
10) Shri Agnelo Fernandes
11) Shri Govind Vagurmekar ... Workmen/Party I

Represented by
the General Secretary,
Goa Trade & Commercial
Workers Union,
Velho Building,
Panaji, Goa.

V/s

M/s. Samudra Ropes Pvt. Ltd.,
A/22, St. Jose de Areal,
Goa. ... Employer/Party II

Workmen/Party I are represented by Adv. Suhas Naik.

Employer/Party II is represented by Adv. G. B. Kamat.

AWARD

(Passed on this 4th day of December, 2007)

1. This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

2. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 26-4-2002 has referred to this Industrial Tribunal following dispute for adjudication:

1) Whether the action of the management of M/s. Samudra Ropes Pvt. Ltd., in terminating the services of the following workmen, all working as Operators, with effect from 16-10-2001, is legal and justified?

1) Shri Narayan Kavlekar.
2) Shri Joaquim Gomes.
3) Shri Agostinho Travasso.
4) Shri Mathew Travasso.

5) Shri A. Manuel Fernandes.
6) Shri Franky Fernandes.
7) Shri John Oliveira
8) Shri Joaquem Fernandes.
9) Shri Anthony Fernandes.
10) Shri Agnelo Fernandes.
11) Shri Govind Vagurmekar.

2) If not, to what relief the workmen are entitled?

3. In response to notices both parties put their appearance in this Industrial Tribunal. The (Party I)/ /Workmen presented claim statement on 10-7-2002 at Exb. 4. It appears from claim statement that the Party II is a company dealing with manufacture of nylon ropes. Narayan P. Naik is owner of the company. The Party I/workmen were working as operators in establishment of the Party II since last many years. The Party II did not make payment of their salaries from the month of September, 2000 till 15th of October, 2001. They approached the owner, Narayan Naik on 15-10-2001 and requested him to pay their salaries. The owner told them not to report on their duties with effect from the next day that is from 16th October, 2002. They raised dispute through General Secretary of the Goa Trade and Commercial Workers Union (in short the said Union) before the employer and then before Deputy Labour Commissioner, Margao with demand of reinstatement in the service. Pursuant to instruction given by the Deputy Labour Commissioner they went to the Party II to join their duties on 12-1-2002. The owner restrained them from entering into the company and told them that their services have been terminated. Conciliation proceedings held by the Deputy Labour Commissioner ended in failure. Therefore, the Government of Goa under its order dated 26-4-2002 referred the dispute for adjudication to this Industrial Tribunal as stated earlier.

4. According to the Party I/workmen refusal of employment by Party II amounts to termination of services. The Party II terminated their services without holding departmental inquiry. They are neither served with notice nor paid retrenchment compensation. Termination of their services is illegal and unjustified. Therefore, by presenting the claim statement they have prayed for reinstatement in the service with full back wages and with continuity in service.

5. The Party II filed written statement on 30-8-2002 at Exb. 5 and thereby combated claim made out by Party I/workmen in the claim statement. According to the Party II, the said Union has no locus standi to espouse dispute on behalf of the workmen. The said Union is also not authorized by the workmen to represent them. Therefore the reference is illegal, void and not maintainable. Further, it appears from claim statement that the Party II sustained loss to the tune of Rs. 125.57 lakh as on 31-3-1999. The Party II approached Board for Industrial and Financial Reconstruction under Sick Industrial Companies (Special Provision) Act, 1985. The Party II has been declared as a Sick Industrial Company under order dated 1-11-2000 issued by the Board. Entire manufacturing activity of the Party II is stopped from August, 2000 till 31-5-2001 and again from 16-8-2001 to 15-10-2001. None of the workers including those represented by the said Union in this reference is entitled to wages for the periods during which the work is stopped. All workers excluding the workmen represented by the said Union resumed their duties in establishment of Party II on 16-10-2001. The Party I/ /workmen went on strike from the very day, that is from 16-10-2001 for non-payment of wages of the period during which manufacturing work was stopped. The Party I/workmen are at liberty to him their duties unconditionally at any time on or before 1st of October, 2002. They are not entitled to the relief claimed in the claim statement. On these grounds the Party II entreated for rejection of the reference.

6. The Party I/workmen submitted rejoinder on 7-10-2002 at Exb. 6. They denied in the rejoinder all contentions which are raised by Party II in written statement and which are adverse to their interest. It is needless to reproduce the denials. They have shown their readiness to join their duties with effect from 1-10-2002. They requested to intervene in the matter in order to arrive at terms of settlement to enable them to join their duties as suggested by the Party II/Employer. They have asserted that they are entitled to the relief as prayed for in the claim statement.

7. During pendency of the reference workman, Shri Franky Fernandes who is at Serial No. 6 is reported to be dead on 18-10-2004. Learned advocate of the Party I/ /workmen filed pursis on 19-11-2004 in this regard along with xerox copy of death certificate at Exb. 17. The deceased workmen is survived by his mother, Juanit Fernandes.

8. On basis of pleadings the then learned Presiding Officer framed issues on 31-1-2003 at Exb. 14. The issues are as follows:

1. Whether the Party I/Union proves that it has the authority to espouse the dispute of the workmen and represent them in the present reference?

2. Whether the Party I/Union proves that the Party II terminated the services of the workmen w.e.f. 16-10-2001 and the said termination is illegal and unjustified?

3. Whether the Party II proves that the workmen did not resume duties from 16-10-2001 along with other workmen but went on strike from 16-10-2001?

4. Whether the workmen are entitled to any relief?

5. What Award?

9. My findings on the above issues are as follows:

Issue No. 1: In the affirmative

Issue No. 2: In the affirmative

Issue No. 3: In the negative
Issue No. 4: Workmen Nos. 1 to 5 and 7 to 11 are entitled to reinstatement with full back wages and continuity in service.
Issue No. 5: As per final order.

REASONS

10. *Issue No. 1:* Relevant portion of Section 36 of the said Act, 1947 and which relates to representation of parties lays down that–

"(1) A workman who is a Party to a dispute shall be entitled to be represented in any proceeding under this Act by–

a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;

b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

c) whether worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

11. The Party I/workmen filed affidavit of R. D. Mangueshkar at Exb. 16 and of Mathew Travasso at Exb. 18. The witness, R. D. Mangueskar is General Secretary of the said Union who is representing the workmen in the present reference. Mathew Travasso is one of the workmen. It appears from these two affidavits that after the Party II terminated services the Party I/ /workmen became members of the said Union which is duly registered under the Trade Unions Act, 1926. Xerox copy of receipt whereunder each of the Party I/workmen, eleven in number has paid to Rs. 150/- as membership fee coming to total of Rs. 1650/- to General Secretary of the said Union is produced at Exb. W-1. It follows that the Party I/workmen immediately after termination of their services became members of the said registered Union.

12. The General Secretary of the said Union by sending representation on 26-11-2001 of which xerox copy is produced at Exb. W-2 to owner of the Party II raised a demand of reinstatement of the Party I/workmen in the service with full back wages and with consequential benefits. Copy of this representation appears to have been sent to the Deputy Labour Commissioner, Government of Goa, Margao.

13. The Party I/workmen are members of the said Union of which the witness, R. D. Mangueshkar is the General Secretary. The claim statement (Exb. 4) is presented by him in the said capacity for and on behalf of the workmen. This will certainly go to show that the Party I/workmen are represented in proceeding before the Deputy Labour Commissioner and then before this Industrial Tribunal by office bearer of the registered trade union. In view of this position and of provision contained in Section 36 of the said Act, 1947 and which is reproduced above, it can safely be concluded that the said Union has locus standi to espouse dispute for and behalf of the workmen and to represent them in the present reference. I agree with argument advanced by learned advocate of Party I/workmen in this regard. My answer to the issue is in affirmative.

14. *Issue No. 2:* It appears from affidavits filed on behalf of the Party I/workmen and of which reference is made earlier that the Party II is a factory which is manufacturing nylon ropes. Narayan P. Naik is its Managing Director. Party I/workmen were working as machine operators in establishment of Party II since last many years. The Party II was compelling the Party I/workmen to continue with their work without making payment of salaries. The Party II did not pay salaries of the workmen from the month of September, 2000 till 15-10-2001. Therefore, the Party I/workmen approached and requested the Managing Director to pay their salaries. The Managing Director got annoyed and told them not to join their duties with effect from 16-10-2001 and that, their services stand terminated with immediate effect.

15. Contents in the affidavits further show that the Party II terminated services of the Party I/workmen without holding departmental inquiry. The Party I/ /workmen are not given one month's notice in writing for retrenchment or paid in lieu of such notice, wages for the period of the notice and also with retrenchment compensation. On these grounds the Party I/workmen are claiming that the termination of their services is illegal and unjustified.

16. Out of the two witnesses, R. D. Mangueshkar and Mathew Travasso by whom the affidavits in evidence are filed at Exb. 16 and Exb. 18 respectively. Only the witness, R. D. Mangueshkar is cross examined by learned advocate of the Party II. At the time of cross examination of witness, Mathew Travasso neither the Party II nor its advocate was present, with result that, evidence of this witness remained unchallenged. Learned advocate of the Party II has withdrawn his Vakalatnama.

17. Though the Party II came with defence in its written statement that the Party I/workmen proceeded on illegal strike with effect from 16-10-2001, the Party II did not lead evidence in support of the defence. I, therefore, do not accept the defence put forth by the Party II. Evidence led by the Party I in the form of affidavits makes it clear that because the Party I/ /workmen requested the Managing Director of the Party II to pay their salaries which were in arrears, the Managing Director got annoyed, told the Party I/ /workmen not to join their duties and thereby terminated their services with effect from 16-10-2001. Such termination does not fall within any of the exceptions or to be precise excluded categories under

Section 2(oo) of the said Act, 1947. Relying upon decision given by the Hon'ble Supreme Court in case of *Mohan Lal, Appellant v/s the Management of M/s Bharat Electronics Limited, Respondent,* reported in *AIR 1981 Supreme Court 1253* which is placed before me by the learned advocate of the Party I, I hold that, termination of the services of the Party I/workmen amounts to retrenchment as defined under Section 2(oo) of the said Act, 1947.

18. Section 25F of the said Act, 1947, provides for compliance with conditions which are precedent to retrenchment of workmen. It lays down that–

> *"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until–*
>
> *a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
>
> *c) notice in the prescribed manner is serviced on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].*

19. Even for the sake of argument assuming that the Party I/workmen proceeded on illegal strike with effect from 16-10-2001 as pleaded by Party II, it was necessary for Party II to issue show cause notice and to hold inquiry against the Party I/workmen before terminating their services. Nothing such has been done by the Party II. Relying upon decision given by the Hon'ble High Court of Punjab and Haryana, in case of *Teja Singh and others Petitioners v/s Nihal Singh Wala Co-op Agriculture Service Society Limited and another, Respondents,* reported in *2003 III CLR 486* and which is placed before me by learned advocate of Party I, I hold that such termination of service of the Party I/ /Workmen is illegal and unjustified.

20. The Hon'ble High Court of Gujrat held in case of *Chief Officer, Keshod Municipality Petitioner v/s Chandrakant Harilal Rakholiya and others, Respondents* reported in *2003 II CLR 153* and which is also placed before me by learned advocate of Party I that in view of non-compliance of the mandatory provisions of Section 25F of the Industrial Disputes Act order of termination becomes null and void. In the present case the Party I/workmen were in continuous service for not less than one year. The Party II did not comply with mandatory provisions contained in Section 25F of the said Act, 1947. Relying upon decision from the reported case of *Chief Officer, Keshod Municipality,* alluded supra, I hold that, termination of the service of the Party I/ /workmen by Party II is illegal and unjustified. My answer to the issue is in affirmative.

21. *Issue No. 3:* The Party II did not lead evidence to prove that the Party I/workmen did not resume duties with effect from 16-10-2001 and went on strike, as pleaded in its written statement. Further, it is proved that the Party II terminated services of the Party I/ /workmen with effect from the said date. I, therefore, answer the issue in negative.

22. *Issue No. 4:* As per provision contained in Section 11-A of the said Act, 1947, if the Labour Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may, by its Award set aside the order of discharge or dismissal, and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the Award of any lesser punishment in lieu of discharge, or dismissal as the circumstances of the case may require.

23. I am satisfied that termination of services of the Party I/workmen is illegal and unjustified. In case if termination of service of workmen is proved to be illegal and unjustified, normal rule or practice is to reinstate the workmen with full back wages and with continuity in service. There is no evidence on behalf of Party II to hold that there should be departure from this normal rule and practice. There is also no evidence to hold that establishment of the Party II has been declared as a Sick Industrial Company, and that, after termination of service of Party I/workmen they are gainfully employed. Considering all these circumstances, I hold that it will be appropriate and in the interest of justice if relief of reinstatement with full back wages and with continuity in the service is granted in favour of the Party I/workmen Nos. 1 to 5 and 7 to 11. So far the deceased workman, Franky Fernandes is concerned such relief cannot be granted in his favour. Learned advocate of the Party II did not place anything on record to show that in such case legal heirs of the deceased are entitled to such relief. I, therefore, hold that only the Party I/workmen Nos. 1 to 5 and 7 to 11 are entitled to reinstatement with full back wages and with continuity in service. I, answer, the issue accordingly.

As a result of findings given to the issues No. 2 and 4, I proceed to adjudicate the dispute by passing order as follows:

ORDER

1. It is hereby adjudicated that the action of the Management of M/s. Samudra Ropes Pvt. Ltd., in terminating the services of the following workmen, all working as Operators, with effect from 16-10-2001, is illegal and unjustified.

1. Shri Narayan Kavlekar
2. Shri Joaquim Gomes
3. Shri Agostinho Travasso

4. Shri Mathew Travasso
5. Shri A. Manuel Fernandes
6. Shri Franky Fernandes
7. Shri John Oliveira
8. Shri Joaquim Fernandes
9. Shri Anthony Fernandes
10. Shri Agnelo Fernandes
11. Shri Govind Vagurmekar.

2. Termination of services of the Party I/workmen, by Party II, set aside.

3. The Party I/workmen Nos. 1 to 5 and Nos. 7 to 11 are entitled to reinstatement in the service of Party II with full back wages and with continuity in the service.

4. No order as to costs.

5. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

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Notification

No. 28/01/2008-LAB/199

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 28-01-2008 in reference No. IT/19/96 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th February, 2008.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/19/96

Chandrakant D. Shirodkar,
Carai Holl,
Shiroda. ... Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji, Goa. ... Employer/Party II

Party I/workman is represented by K. V. Nadkarni (Representative).

Party II/Employer is represented by Adv. P. M. Nimbalkar.

AWARD

(Passed on this 28th day of January, 2008)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1) (d) of the said Act, 1947, under order dated 17-4-96 has referred to this Industrial Tribunal following dispute for adjudication:

> "Whether the action of M/s. Kadamba Transport Corporation Ltd., in terminating the services of Shri Chandrakant D. Shirodkar, Driver, w.e.f. 31-1-1995 is legal and justified ?
>
> If not, to what relief the said workman are entitled ?"

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I/ /workman presented his claim statement on 2-7-1996 at Exb. 3. According to him, Party II published advertisement in local newspaper in the month of April, 1994 and invited applications from eligible candidates for post of drivers in its establishment. Pursuant to this advertisement he approached Personal Manager of the Party II, along with his driving licence, service badge and experience certificate etc. as required. The Party II after completion of all formalities found him suitable and thereafter appointed him as a driver with effect from 3-5-1994. His services are governed by Certified Standing Orders of Party II. He worked as a driver at Panaji depot till 28-11-1994 and thereafter on transfer at Margao depot till 31-1-1995. The bus on which he was working as a driver on 28-1-1995 met to accident without there being fault on his part. On completion of all formalities which were required by police, when he went to join his duty on 31-1-1995 at Margao depot, he was refused employment under instructions of Asst. Traffic Superintendent, Ramdas Naik. In pursuance of advise given to him he approached Personal Department of Head Office. He could not get response from the Personal Department also. Inspite of his efforts he was not allowed to join his duties as driver. He made representation on 20-2-1995 to Managing Director of the Party II who in turn under letter dated 18-9-1995 turned down the representation. Rejection of the representation is without application of mind and by the officer who is junior in rank. He was in continuous service for more than 240 days. The Party II did not issue order in writing to terminate his service which is against provisions contained in Certified Standing Orders. The termination of his service is illegal and bad in law. Therefore, by presenting the claim statement he has prayed for declaration that the termination of the services is illegal

and bad in law, and for reinstatement with continuity in the service and with all consequential benefits with effect from 31-1-1995. In addition, he has prayed for interest @ 18% p.a. on the back wages.

3. The Party II filed written statement on 19-7-1996 at Exb. 5. It appears from written statement that, section of heavy vehicle drivers working in establishment of Party II went on illegal strike. There was pressing need for the Party II to employ drivers with immediate effect. Due to urgency, only driving licences and public service badges were verified before the newly recruited drivers were given duty. Appointment order was not issued to any of such drivers. The appointment orders were to be issued after verification of documents and after taking prescribed driving test. Age limit for the post of driver as per advertisement was 35 years. On scrutiny of documents it was found that the Party I who was appointed as driver on daily wages was of 40 years in the year 1994, and was of 41 years at the time of scrutiny of documents on 7-3-1995. Therefore, his name was not recommended for appointment as heavy vehicle driver on probation. It is the Party I who failed to report on his duty with effect from 1-2-1995 and thereby brought contract of service to an end. He is not entitled to any of the reliefs claimed by him.

4. The Party I submitted rejoinder on 11-10-1996 at Exb. 6. He has denied in the rejoinder all contentions which are raised by Party II in the written statement and which are adverse to his interest. He further asserted that all the documents including driving licence, badge, experience certificate and work certificate were checked and verified, and he was interviewed and his driving test was taken before he came to be given duty as driver. The Party II recruited him as driver with full knowledge of his age, allowed him to continue in the service for more than 240 days and thereby waved condition of age limit. He did not bring contract of service to an end as alleged by the Party II. He reiterated that he is entitled to the reliefs as prayed for in the claim statement.

5. On basis of pleadings the then learned Presiding Officer framed issues on 24-10-1996 at Exb. 7. The issues are as follows:

1. Whether the Party I proves that he was in continuous service of 240 days on the date of refusal of employment to him?

2. Whether the Party I proves that the termination of his service by the Party II w.e.f. 31-1-1995 is illegal and unjustified?

3. Whether the Party II proves that the Party I failed to report for duty from 1-2-1995 thereby putting an end to the contract of service as a daily wage worker?

4. Whether the Party I is entitled to any relief?

5. What Award?

6. My findings on the above issues are as follows:

Issue No. 1: In the affirmative.

Issue No. 2: In the affirmative.

Issue No. 3: Does not survive.

Issue No. 4: Entitled to wages for the notice period and to retrenchment compensation.

Issue No. 5: As per final order.

REASONS

7. *Issue No. 1:* The Party I examined himself at Exb. 8. It appears from his evidence that he was employed as a driver in establishment of the Party II with effect from 30-4-1994 on daily wages. He worked as a driver in Panaji depot till 28-11-1994 and thereafter on transfer at Margao depot of Party II till 28-1-1995. He has worked as driver for 20 days in the month of May, 1994 for 29 days in the month of June, 1994, for 27 days in the month of July, 1994, for 27 days including one day of public holiday, each in the months of August, 1994, September, and October, 1994, for 28 days including two days of public holidays in the month of November, 1994 for 21 days including one day of public holiday in the month of December, 1994, for 28 days including one day of public holiday in the month of January, 1995 and for 5 days in the month of February, 1995.

8. In support of his case the Party I examined witness, B. V. Gauns at Exb. 9 and who is also working as driver in establishment of the Party II with effect from 6-5-1994. He is examined to prove that as per advertisement published by the Party II whereunder applications were invited for the post of drivers, age which was prescribed for drivers was 35 years. He was of more than 36 years of age. Presently, he is working as driver in Margao depot of Party II. His evidence is not material at this stage.

9. The Party II examined its Works Manager, C. P. Anthony at Exb. 10. He pointed out that the Party II worked as driver for total number of 232 days including paid public holidays during period from 3-5-1994 to the month of February, 1995.

10. Representative of the Party I argued that if evidence of the Party I coupled with the days of work shown in the pay slips produced at Exb. 8, colly, and overtime wages which are shown in these pay slips, as paid to the Party I is taken into consideration, it becomes apparent that the Party I was in continuous service for more than 240 days in a calendar year. As against this, learned advocate of the Party II pointed out that the days for which the Party I worked as a driver and which are shown in the pay slips (Exb. 8 colly) include the days also on which the Party I has done overtime duty. Evidence of the Party I as well as the days of work shown in the pay slips do not go to show that the Party I was in continuous service of 240 days in a

calendar year. Therefore, according to him, argument advanced by representative of the Party I deserves to be turned down.

11. If the days for which the Party I has worked as driver and which are stated by him in evidence are counted, total of the days comes to only 239. Therefore oral evidence of the Party I does not establish that he was in continuous service for more than 240 days in a calendar year in establishment of the Party II. Representative of the Party I elaborately pointed out in his argument that the Party II did not take into consideration Sundays and other holidays while counting total working days of the Party I during one calendar year. Sundays and holidays are required to be treated as actual working days. In this context, he relied upon decision given by the Hon'ble Supreme Court in case between *Workmen of American Express International Banking Corporation and Management of American Express International Banking Corporation, reported in SCLJ 1984-87 page 730* and of which he has produced xerox copy on the record. The Hon'ble Supreme Court held in this reported case that Sundays and other paid holidays are required to be treated as days "actually worked under the employer". The workmen in this reported case were typist-clerks in a temporary capacity and they were employed as such with a number of short breaks. In the present case, the Party I was appointed on daily wages and not on temporary basis. In view of this distinguishable fact, with respect, I am of the opinion that, decision relied upon by representative of Party I is not applicable to the present case. I do not agree with him.

12. It is admitted position that the Party I was in the service as a driver during period from 3-5-1994 till the month of February, 1995. What is apparent from oral evidence of the Party I is not real state of things. Pay slip of the Party I and which is for the month of May, 1994 speaks that he has worked as driver for twenty days in this month. Pay slip of the Party I and which is for the month of June, 1994 speaks that he has worked as driver for 29 days in this month. Pay slip of the Party I and which is for the month of July, 1994 speaks that the he has worked as driver for 27 days in this month. There is no overtime duty in these three months that is from the month of May, 1994 till the month of July, 1994.

13. Pay slip of the Party I and which is for the month of August, 1994 shows that he has done duty as a driver for 26 days in this month. Admittedly, he was appointed on daily wages @ Rs. 42/-. This fact becomes clear from all the pay slips also, produced at Exb. 8 colly. Total wages @ Rs. 42/- for the 26 working days, come to Rs. 1092/-. The Party I is paid Rs. 65.18 ps. as Line Allowance and Rs. 42/- as overtime wages in this month. Thus, the gross salary of the Party I for this month is Rs. 1,199.18 ps. The day on which he has done overtime duty and for which he has been paid overtime wages is not counted as working day and is not shown in the pay slip for the month of August, 1994. If the day on which he has done overtime duty is counted, it becomes clear that the Party I has worked for 27 days in the month of August, 1994.

14. Pay slip of the Party I and which is for the month of September, 1994 shows that he has done duty as a driver for 26 days in this month. Total wages @ Rs. 42/- for the 26 working days, come to Rs. 1092/-. The Party I is paid Rs. 57.30 ps. as Line Allowance and Rs. 42/- as overtime wages in this month. Thus, gross salary of the Party I for this month is Rs. 1,191.30 ps. The day on which he has done overtime duty and for which he has been paid overtime wages is not counted as working day and is not shown in the pay slip for the month of September, 1994. If the day on which he has done overtime duty is counted, it becomes clear that the Party I has worked for 27 days in this month.

15. Pay slip of the Party I and which is for the month of October, 1994 shows that he has done duty as a driver for 26 days in this month. Total wages @ Rs. 42/- for the 26 working days, come to Rs. 1092/-. The Party I is paid Rs. 64.92 ps. as Line Allowance and Rs. 42/- as overtime wages in this month. Thus, the gross salary of the Party I is Rs. 1,198.92 ps. for this month. The day on which he has done overtime duty and for which he has been paid overtime wages is not counted as working day and is not shown in the pay slip for the month of October, 1994. If the day on which he has done overtime duty is counted, it becomes clear that the Party I has worked for 27 days in this month.

16. Pay slip of the Party I and which is for the month of November, 1994 shows that he has done duty as a driver for 26 days in this month. Total wages @ Rs. 42/- for the 26 working days, come to Rs. 1092/-. The Party I is paid Rs. 41.14 ps. as Line allowance and Rs. 84/- as overtime wages in this month. Thus the gross salary of the Party I is Rs. 1,217.14 ps. for this month. The two days on which he has done overtime duty and for which he has been paid overtime wages are not counted as working days and are not shown in the pay slip for the month of November, 1994. If the days on which he has done overtime duty are counted, it becomes clear that the Party I has worked for 28 days in this month. I have calculated the two days of overtime duty on the basis that in earlier months the Party I is paid overtime wages @ Rs. 42/-.

17. Pay slip of the Party I and which is for the month of December, 1994 shows that he has done duty as a driver for 20 days in this month. Total wages @ Rs. 42/- for the 20 working days, come to Rs. 840/-. The Party I is paid Rs. 44.90 ps. as Line Allowance and Rs. 42/- as overtime wages in this month. Thus, the gross salary of the Party I was Rs. 926.90 ps. for this month. The day on which he has done overtime duty and for which he has been paid overtime wages is not counted as working day and is not shown in the pay slip for the month of December, 1994. If the day on which he has done

overtime duty is counted, it becomes clear that the Party I has worked for 21 days in this month.

18. Pay slip of the Party I and which is for the month of January, 1995 shows that he has done duty as a driver for 27 days in this month. Total wages @ Rs. 42/- for the 27 working days, come to Rs. 1134/-. The Party I is paid Rs. 50.48 ps. as Line Allowance and Rs. 77.81 ps. as overtime wages in this month. Thus, the gross salary of the Party I is Rs. 1,262.29 ps. for this month. The days on which he has done overtime duty and for which he has been paid overtime wages are not counted as working days and are not shown in the pay slip for the month of January, 1995. Since the overtime wages are paid more than Rs. 42/-, on basis of the overtime wages Rs. 77.81 ps., I take that he has done overtime duty of two days in this month. If the days on which he has done overtime duty and for which he is paid overtime are counted, it becomes clear that the Party I has worked for 29 days in this month.

19. The Party I has not done overtime duty in the month of February, 1995. Total of the days on which he has done overtime duty during period from August, 1994 to January, 1995 come to 8. If these 8 days of overtime duty are added in working days shown in the pay slips which are from the month of May, 1994 to the month of February, 1995 (Exb. 8 colly), it becomes clear that he has done work for 240 days.

20. Section 25-B of the said Act, 1947 defines "continuous service" as follows:

"For the purpose of this Chapter–

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year of six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than–

(i) one hundred and ninety days in the case of a workman employed,

below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than–

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation–For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which –

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

21. The Party I has actually worked under the employer, that is, the Party II for not less than 240 days during a period of 12 calendar months preceding the date with reference to which calculation is to be made, that is, the date on which he lastly worked in the month of February, 1995. This factual position coupled with the provision Section 25-B (2) (a) (ii) of the said Act, 1947 leads to logical conclusion that the Party I was in continuous service of 240 days in one calendar year as stated earlier. I, therefore, answer the issue in affirmative.

22. *Issue No. 2:* According to the Party I, at the time of termination of his service the Party II neither issued notice nor paid to him retrenchment compensation. Evidence of Work Manager examined for and on behalf of the Party II shows that as per advertisement whereunder applications for the post of drivers in establishment of Party II were invited, age limit for the post of driver was prescribed as 35 years. After the Party I came to be appointed as driver, at the time of scrutiny it was found that the Party I was of overage. Therefore, the Party II discontinued service of the Party I.

23. Representative of the Party I argued that other drivers who were appointed at the same time and who

were overage at the time of their appointments are continued in the service by the Party II. In other words in cases of such drivers who are continued the Party II has relaxed their age limit. The Party II did not adopt such liberal attitude in favour of the Party I. On the contrary, the Party II by committing discrimination terminated services of the Party I without written order. Therefore, according to him, termination of services of the Party I cannot be said to be legal and justified.

24. Drivers working in establishment of the Party II had gone on illegal strike in month of April, 1994. Therefore, it was necessary for the Party II to appoint drivers on daily wages. The Party II published advertisement in local newspapers and invited applications from eligible candidates for the post of drivers. Age limits and qualifications were stated in the advertisement. Age limit was 35 years. Driving licence as well as experience was necessary. Pursuant to the advertisement various candidates including the Party I made applications. The Party I was one of the candidates who were short listed. Therefore the Party I was directed to report on duty as driver with effect from 3-5-1994.

25. The Party I admitted in his cross examination that as per the advertisement published in the month of April, 1994 in daily newspaper "Gomantak" maximum age which was prescribed for the post of driver was 35 years and that when he came to be employed as driver in the month of May, 1994, he was of 41 years of age. It follows that he was not eligible candidate for selection on the post of driver. It appears from report of the Selection Committee and of which xerox copy is produced at Exb. E-2 and which is brought to my notice by learned advocate of Party II that, due to the strike, heavy vehicle drivers were recruited directly without following recruitment procedure due to exigency. Number of drivers including the Party I who had crossed age limits got advantage of the situation which the Party II was facing on account of strike. The report further shows that the Departmental Selection Committee after considering merit of each individual driver and considering ten month's service, decided to relax age upto forty years and educational qualification and experience etc. as per decision taken in the meeting held on 7-3-1995. The witness, B. V. Gauns who is examined by the Party I was of above 36 years of age. He is one of the drivers, 59 in number, whose age limit, qualification and experience is relaxed under the said report submitted by the Selection Committee. The Party I had already crossed prescribed age limit at the very time when the advertisement came to be published. He was not eligible even to apply for the post of driver. Since the Party I had attained age of 41 years in the month of May, 1994, that is, when he came to be appointed as driver, it reveals that his case is not taken up for consideration by Selection Committee for relaxation of age, experience and qualification etc. Under these circumstances it cannot be said that the Party II has committed discrimination in case of the Party I as argued by representative of the Party I. I do not agree with his argument.

26. Next contention which is pressed into service by representative of the Party I is that the Party I has completed continuous service of 240 days. The Party II did not comply with mandatory provisions contained in Section 25 F of the said Act, 1947. On this ground also, according to him, termination of service of the Party I is illegal and unjustified. He relied upon decision given by the Hon'ble Supreme Court in case between *H. D. Singh and Reserve Bank of India and others, reported in SCLJ 1994-87 page 76* and of which xerox copy is placed before me. In this reported case petitioner's name who was daily rated worker had been struck off the list contrary to mandate contained in section 25 F. The Hon'ble Supreme Court held that—

> *"the words 'for any reason whatsoever' occurring in section 2 (oo) are very wide and almost admitting of no exception. The striking of the name of workman from the rolls by the employer amounts to termination of service and such termination is retrenchment within the meaning of Section 2(oo) of the Act if effected in violation of the mandatory provision contained in Section 25 F and is invalid".*

27. In the present case the Party I was daily wage worker. The witness who is examined on behalf of the Party II admitted that on scrutiny of application given by the Party I, it was found that the Party I was overage and therefore the Party II orally discontinued service of the Party I. Pay slip of Party I produced on record at Exb. 8, colly, and which is for month of February, 1995 discloses that the Party I worked as a driver for five days in this month. Therefore, it cannot be accepted that, service of the Party I came to be terminated with effect from 31-1-1995. Even though, there is such position, one fact which remains there is that the Party II has discontinued service of the Party I. Such discontinuation of service amounts to retrenchment as defined under Section 2 (oo) of the said Act, 1947. Once there is retrenchment of service, relying upon decision given by the Hon'ble Supreme Court and which is referred by representative of the Party I. I hold that, Section 25 F of the said Act, 1947, comes into picture. This section lays down that—

> *"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or*

the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.).

28. The Party II did not comply with the above provisions which are mandatory in nature and which are precedent to retrenchment of the Workman/Party I. Therefore, and relying upon decision given by the Hon'ble Supreme Court, referred to above, I agree with contention raised by representative of the Party I that since there is no compliance with mandatory provision contained in Section 25-F, termination of service of the Party I is illegal and unjustified. I, therefore, answer the issue in affirmative.

29. *Issue No. 3:* It is proved that the Party II has terminated service of the Party I. I, therefore, hold that the issue as to whether the Party I failed to report for duty from 1-2-1995 and thereby put an end the contract of service as daily wage worker, does not survive. I answer the issue accordingly.

30. *Issue No. 4:* The Party I succeeded in proving that, termination of his service by Party II is illegal and unjustified. Under this circumstance, it will have to be decided whether he is entitled to the relief of reinstatement with full back wages and with other monetary benefits including interest.

31. Representative of the Party I argued that, termination of service of the Party I is proved to be illegal and unjustified. Therefore, according to him, in view of provision contained in Section 11-A of the said Act, 1947 the Party I is entitled to the reliefs as claimed. He further pointed out that even though the Party I was overage at the time of making application for the post of driver, the Party II employed the Party I as driver. Now the Party II cannot terminate service of the Party I on the ground of overage. This is one more reason which in his opinion is in favour of the Party I for grant of the reliefs.

32. In reply learned advocate of the Party II argued that appointments of the Party I and of other drivers were pressing urgency for the Party II. Therefore, the Party II assigned duties to the Party I and to other drivers without appointment orders in writing. When the Party II came to know at the time of scrutiny of papers that the Party I is overage, the Party II discontinued service of the Party I immediately. The Party I was not eligible for the post of driver and even then the Party I submitted application and tried to get advantage of the situation. In case if the reliefs prayed for by the Party I are granted that will amount in legalizing the illegal appointment of the Party I. Therefore, he urged to turn down reliefs claimed by the Party I.

33. I have already narrated the background behind making appointments of the Party I and of other drivers in the month of May, 1994. Submission made by learned advocate of the Party II that if the reliefs as prayed for by the Party I are granted, that will certainly amount in legalizing illegal appointment of the Party I merits consideration. The illegality, which has crept in, should not be allowed to be legalized with the help of court. I am in full agreement with submission made by him. I, therefore, hold that, the Party I is not entitled to reinstatement in the service with full back wages and with other benefits. He is entitled only to wages for the period of one month's notice and to retrenchment compensation provided under Section 25-F (a) and (b) respectively, of the said Act, 1947. I answer the issue accordingly.

As a result of findings given to the issues No. 2 and 4, I proceed to adjudicate the dispute by passing order as follows:

ORDER

1. It is hereby adjudicated that the action of M/s. Kadamba Transport Corporation Ltd., in terminating the services of Shri Chandrakant D. Shirodkar, Driver, w.e.f. 31-1-1995 is illegal and unjustified.

2. It is hereby adjudicated that the Party I/Workman is entitled to wages for the period of one month's notice and to retrenchment compensation under Section 25 F (a) and (b) respectively, of Industrial Disputes Act, 1947.

3. No order as to costs.

4. The award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/199

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 22-01-2008 in reference

No. IT/83/89 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th February, 2008.

———————

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No. IT/83/89

Workman
Rep. by
The President,
Gomantak Mazdoor Sangh,
Driver Hill,
Vasco-da-Gama, Goa. ... Workman/Party I

V/s

The Managing Director,
Goa Steel Rolling Mills Pvt. Ltd.,
Bicholim, Goa. ... Employer/Party II

Party I/Workman is represented by Adv. B. Harmalkar.

Party II/Employer is represented by Adv. A.V. Nigalye.

AWARD

(Passed on this 22nd day of January, 2008)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:-

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 15-11-1989 has referred to this Industrial Tribunal following dispute for adjudication:

> "Whether the action of the management of M/s. Goa Steel Rolling Mills Private Limited, Bicholim, Goa, in terminating the services of Shri Jagatnarayan Mishra, Helper, with effect from 13-2-1989 is legal and justified ?
>
> If not, to what relief the workman is entitled ?"

2. In response to notices both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 8-6-1990 at Exb. 2. Party II filed its written statement on 5-6-1991 at Exb. 5. Party I submitted rejoinder on 3-7-1991 at Exb. 6. On basis of pleadings the then learned Presiding Officer framed issues on 1-8-1991 at Exb. 7. The Party I examined himself at Exb. 14. Party II examined its Asst. Legal Officer, M. M. Alve at Exb. 15. Thereafter both parties arrived at settlement and accordingly filed terms of settlement at Exb. 23. Learned advocates of both parties requested to pass the Award in terms of the settlement. Hence, I proceed to adjudicate the reference in terms of the settlement by passing order as follows:

Order

1. The reference is adjudicated in terms of the settlement (Exb. 23).

2. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I, a sum of Rs. 62,940/- (Rupees Sixty two thousand nine hundred and forty only) in full and final settlement of his claim in the above Reference No. IT/83/89.

3. Out of the said sum of Rs. 62,940/- (Rupees Sixty two thousand nine hundred and forty only) the Party II shall draw two cheques of Rs. 5,000/- (Rupees five thousand only) each, thus making a total of Rs. 10,000/- (Rupees Ten thousand only) on behalf of the Party I in favour of Shri Guru Shirodkar, Advocate, towards the legal fees payable to him by the Party I and hand over the said cheques to Shri Guru Shirodkar. The Party II shall pay the remaining amount of Rs. 52,940/- (Rupees Fifty two thousand nine hundred and forty only) to the Party II.

4. The aforesaid sum of Rs. 52,940/-(Rupees Fifty two thousand nine hundred and forty only) shall be paid by the Employer/Party II to the workman/Party I in six equal monthly installment beginning from August, 2006 & ending in January, 2007. Each of the said installments shall be paid in the manner stated in Clause No. 4 hereinbelow.

5. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit, Bicholim Branch:-

Cheque No.	Date which the cheque bears	Amount
1. 09191	05.08.2006	Rs. 5,490=00
2. 09192	05.09.2006	Rs. 5,490=00
3. 09193	05.10.2006	Rs. 10,490=00
4. 09194	05.11.2006	Rs. 10,490=00
5. 09195	05.12.2006	Rs. 10,490=00
6. 09196	05.01.2007	Rs. 10,490=00
		Rs. 52,940=00

The Workman/Party I admits and acknowledges the receipts of the aforesaid cheques.

6. The Employer/Party II has issued to Shri Guru Shirodkar the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit Bicholim, Goa towards the aforesaid payment of Rs. 10,000/- (Rupees Ten thousand only):-

Cheque No.	Date which the cheque bears	Amount
1. 09189	05.08.2006	Rs. 5,000=00
2. 09890	05.09.2006	Rs. 5,000=00
		Rs. 10,000=00

The Party I acknowledges the receipt of the aforesaid cheques.

7. The parties hereby declare that their dispute in Reference No. IT/83/89 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim and/or demand of whatsoever nature against each other.

8. No order as to costs.

9.The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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